

TAB B

VOLUME: I
PAGES: 1-253
EXHIBITS: See Index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

	x	
CYCLE-CRAFT CO., INC.,	x	
d/b/a BOSTON	x	
HARLEY-DAVIDSON/BUELL,	x	
Plaintiff	x	
	x	CASE NO.
vs.	x	04 11402 NMG
	x	
HARLEY-DAVIDSON MOTOR	x	
COMPANY, INC., and BUELL	x	
DISTRIBUTION COMPANY, LLC,	x	
Defendants	x	

DEPOSITION of JOHN ATWOOD, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on June 7, 2005, commencing at 9:04 a.m.

REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/FACSIMILE 617.786.7723

1 MR. REHNQUIST: You mean, since
2 '84?

3 MR. BERKOWITZ: Yes.

4 Q. Mr. Atwood, we've marked as Exhibit No. 1, a
5 copy of Harley-Davidson Dealer Contract with
6 Cycle-Craft.

7 And the first thing that I want you
8 to do is, if you can, identify your
9 signature on this document.

10 We have numbers in the lower
11 right-hand corner, and do you see your
12 signature on Page HD0035?

13 A. Yes, I do.

14 Q. All right. And did you sign the
15 Harley-Davidson Dealer Contract on
16 September -- on or about September 19, 2000?

17 A. Yes.

18 MR. REHNQUIST: Wait a second. I
19 have a question. Which -- my -- the thing I
20 have marked as Exhibit 1 only goes through
21 HD32.

22 MR. BERKOWITZ: Yeah. For the
23 record, Atwood Exhibit 1 is HD1 and the
24 numbers, I think, are not perfectly in

1 order, but the last page is HD32, consists
2 of Dealer Contract and General Conditions of
3 Sales and Service.

4 Q. Can you identify Exhibit 1A as an extension
5 of your dealer contract?

6 MR. REHNQUIST: Can you identify 1A
7 for the record?

8 MR. BERKOWITZ: Sure. An extension
9 of the dealer contract, that's what it's
10 called.

11 Q. Harley-Davidson Motor Company, Motorcycle
12 Dealer Contract Extension; is that what that
13 is?

14 MR. REHNQUIST: I object to the
15 form.

16 Q. You still have to answer.

17 MR. REHNQUIST: If I object, you
18 still have to answer --

19 THE WITNESS: Yes.

20 MR. REHNQUIST: Unless I tell you
21 not to answer.

22 Q. Is that a contract extension for the
23 Harley-Davidson contract?

24 A. Yes.

1 Q. All right. And did you sign this document
2 on June 5, 2002?

3 A. Yes.

4 Q. We've marked as Exhibit 2 a copy of the
5 Buell Distribution Corporation Dealer
6 Contract, for the record, bates-number
7 beginning HD33 ending HD61.

8 And do you recognize your signature
9 to the Buell Distribution Contract on
10 Page HD3?

11 MR. REHNQUIST: I'm just going to
12 object to the form of the question because
13 these pages are not sequentially numbered.
14 I just want that to be on the record.

15 MR. BERKOWITZ: Okay.

16 Q. Do you recognize your signature on Page HD3?

17 A. Yes.

18 Q. All right. And Karen attested to your
19 signature on that day?

20 A. Yes.

21 Q. And that was on or about September 19th of
22 2000?

23 MR. REHNQUIST: I object to the
24 form.

1 A. Yes.

2 Q. And do you recognize Exhibit 2A as Buell
3 Extension of your dealer contract with
4 Buell?

5 A. Yes.

6 Q. And you signed that extension on June 5,
7 2002?

8 A. Yes.

9 Q. Did you understand that with respect to
10 coming back to -- strike that.

11 Coming back to Exhibit 1, did you
12 understand that under this contract
13 Harley-Davidson was granting your company
14 the right to purchase and resell Harley
15 Davidson products?

16 MR. REHNQUIST: Object to the form.
17 The document speaks for itself. It's a
18 legal document. His understanding is
19 irrelevant.

20 MR. BERKOWITZ: No, it isn't. And
21 I object to the coaching.

22 Q. Did you read the contract before signing it?

23 A. Probably not.

24 Q. Did you have counsel available to you to

1 might jeopardize your relationship with
2 Harley-Davidson? And by "your," I mean your
3 companies.

4 MR. REHNQUIST: I object to the
5 form.

6 A. Yes.

7 Q. We've premarked as Exhibit 3, a copy of your
8 declaration in this case; do you recognize
9 your signature on Page 14?

10 A. Yes.

11 Q. And did you understand when you signed this,
12 that you were declaring under the penalties
13 of perjury that the statements in your
14 declaration were true?

15 A. Yes.

16 Q. And you understood that this document was
17 going to be submitted to the court in this
18 case?

19 A. Yes.

20 Q. And that it was, therefore, an important
21 document?

22 MR. REHNQUIST: Object to the form.

23 A. Yes.

24 Q. I want to direct your attention to Paragraph

1 used, but basically they didn't want U.S.
2 dealers selling bikes over to Europe.

3 Q. Okay. And were you aware of the Non-Retail
4 Policy taking different forms over the years
5 since 1988?

6 MR. REHNQUIST: Object to the form
7 of the question.

8 A. I know they've -- I knew that they had made
9 some changes here and there in it.

10 What they were exactly, I couldn't
11 tell you.

12 Q. And have you generally been familiar, let's
13 say, since the early 1990s that
14 Harley-Davidson had policies prohibiting
15 dealers from selling to persons intending to
16 resell motorcycles?

17 A. Yes.

18 MR. REHNQUIST: Object to the form.

19 Mr. Atwood, please give me a chance
20 to put my objection on the record before you
21 answer.

22 THE WITNESS: Okay.

23 Q. Do you recall --

24 A. *(Cell phone rings.)* Is that me?

1 motorcycles only to ultimate consumers?

2 MR. REHNQUIST: I object to the
3 form and object to the lack of a time
4 frame.

5 Q. Let's say since, what you said, the late
6 1980s.

7 A. I'm not getting this. I'm not getting this.
8 It seems like you're asking me the same
9 question.

10 Q. Okay. Let me try it again.

11 A. And I want to make sure I give you a proper
12 "yes" or "no."

13 Q. I appreciate that. Let me try it again.

14 Did your under -- strike that.

15 Did you understand that
16 Harley-Davidson's Non-Retail Sales Policy
17 required dealers not to sell to persons
18 intending to resell the bikes? I'm talking
19 about new bikes.

20 A. Yes.

21 Q. All right. And did you understand that
22 dealers were supposed to only sell to
23 ultimate consumers?

24 A. Yes.

1 A. No.

2 Q. And I take it until this day you have not
3 had any conversations with Mr. DeMattia
4 about Ron Buchbaum; is that correct?

5 A. Correct.

6 Q. Have you seen him at any dealer functions?

7 A. I haven't even seen him. I don't know what
8 he looks like.

9 Q. Okay. Do you know who Gregg Cook is?

10 A. Doesn't sound familiar.

11 Q. Do you know a former dealer in Florida named
12 Gregg Cook? Does that sound familiar to
13 you?

14 A. No.

15 Q. If I were to suggest to you that he's a
16 dealer in Louisiana currently, does that --
17 does that jog your memory at all?

18 A. Nope.

19 Q. Okay. Do you know what a sales and warranty
20 registration is or an SWR?

21 A. Yes.

22 Q. What is it?

23 A. It's a paper that you send into the factory
24 to start the warranty on a motorcycle.

1 Q. Okay. Start the warranty for whom?

2 A. The owner of the motorcycle.

3 Q. Okay. Is that the customer?

4 A. The end user.

5 Q. So, the person to whom your dealership would
6 sell a motorcycle?

7 MR. REHNQUIST: I object to the
8 form.

9 Q. Is that right?

10 A. Yes.

11 Q. And when did you first become familiar with
12 the SWRs?

13 A. Back in like in '88, '87. '87, '88.

14 Q. Is that when they first started using them?

15 A. I think they called them "SWRS," though.

16 Q. SWRS?

17 A. Yeah. They changed to SWR.

18 Q. Do you remember what that last "S" stood
19 for?

20 A. No idea. I don't know what "SWR" stands
21 for.

22 Q. If I were to suggest to you that it stands
23 for "sales and warranty registration," does
24 jog your memory?

1 A. Yep. I'm not that good at acronyms.

2 Q. Okay. How -- do you know how the dealership
3 submits SWRs today?

4 A. Yeah, they do it electronically.

5 Q. And for how long have they been doing that?

6 A. Three years, four years they've been doing
7 that.

8 Q. And at what point in time does the
9 dealership submit the SWR relative to the
10 sale of a motorcycle?

11 MR. REHNQUIST: I object to the
12 form.

13 A. When the bike is sold.

14 Q. And then you send in the SWR electronically;
15 is that correct?

16 MR. REHNQUIST: I object to the
17 form.

18 A. I would assume that. I haven't done one.

19 Q. Okay. Is it your understanding that after
20 the SWR is sent in, though, the -- that
21 starts the warranty for the customer?

22 A. Yes. It starts the warranty on the
23 motorcycle.

24 Q. For the customer?

1 Q. And did you give it to somebody?

2 A. Yes.

3 Q. Who did you give it to?

4 A. My sister.

5 Q. When did you do that?

6 A. Back in 2001, 2002. And then, of course --
7 well...

8 Q. Apart from your handwritten notes, have you
9 seen any other document whether in
10 handwritten form or typed like this,
11 relating to the motorcycles that the
12 dealership owns on your behalf?

13 A. I may have.

14 Q. Okay. But do you remember that sitting here
15 today?

16 A. No, I don't specifically remember sitting
17 down looking at a list of machines that I
18 owned or the company owned.

19 Q. Could you turn back to your declaration and
20 take a look at Page 10, Paragraph 41.

21 A. *(Witness reviews document.)*

22 Uh-huh.

23 Q. Mr. Atwood, this paragraph refers to three
24 motorcycles that Cycle-Craft purchased for

1 your collection; do you recall that?

2 A. Yes.

3 Q. And what kind of motorcycles were they?

4 A. Two anniversaries and a Buell.

5 Q. When you say "two anniversaries," what do
6 you mean?

7 A. Two, 2003 Harley-Davidson motorcycles and
8 one, I think it was a 2003 Fire Bolt.

9 Q. Is that a Buell?

10 A. Yes.

11 Q. When you say "anniversary," does that -- is
12 that a special kind of 2003 Harley-Davidson
13 motorcycle or were all the 2003 anniversary
14 year bikes?

15 A. The latter.

16 Q. Do you recall what kind of 2003
17 Harley-Davidson motorcycles they were?

18 A. Oh, yes.

19 Q. What kind were they?

20 A. One was a Sportster and the other one was a
21 full dresser with a sidecar, FLHTCUI.

22 Q. And these motorcycles are still owned by
23 Cycle-Craft today?

24 A. Yes.

1 Q. They've never been sold by Cycle-Craft to
2 anyone?

3 A. No.

4 Q. Including you? Cycle-Craft did not sell
5 them to you?

6 A. Not that I'm aware of.

7 Q. And Cycle-Craft obtained ownership of these
8 three motorcycles by purchasing them from
9 Harley-Davidson; is that correct?

10 A. Yes.

11 Q. Do you know whether they have been
12 registered with a Massachusetts DMV?

13 A. Yes.

14 Q. That is, they have been?

15 A. One.

16 Q. Which one?

17 A. FLHTCU -- FLHTCUI.

18 Q. That's one of the -- is that the Sportster
19 or --

20 A. That's a full dresser. That's the ultra
21 with a sidecar rig.

22 Q. And you know that because you've ridden it
23 out on the street; is that right?

24 A. Yes.